EXHIBIT E

Declaration of Clifford Kupperberg, CPA in Support of Plaintiffs' Motion for Class Certification

THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY SESSA and MARK SESSA, on behalf of themselves and all others similarly situated,	Case No. 2:20-cv-02292-GMN-BNW
	Judge Gloria M. Navarro
Plaintiffs,	Magistrate Judge Brenda Weksler
v.	
	Complaint Filed: December 17, 2020
ANCESTRY.COM OPERATIONS INC., a Virginia Corporation; ANCESTRY.COM INC., a Delaware Corporation; and ANCESTRY.COM LLC, a Delaware Limited Liability Company,	
Defendants.	

DECLARATION OF CLIFFORD KUPPERBERG, CPA

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

KUPPERBERG & ASSOCIATES

901 Mariners Island Blvd, Suite 125 · San Mateo, CA 94404

TEL: (415) 990-1932   FAX (650) 358-9015

CLIFFORD KUPPERBERG, CPA

Cliff@kupperberg.com

December 5, 2022

DECLARATION TO BE INCLUDED IN COURT FILING

Re: Sessa v *Ancestry.com Case No: 2:20-ev-02292-GMN-BNW*

1.   I am writing in connection with my engagement on behalf of the Class in the above-referenced litigation as an expert on damages. Please consider this letter as my preliminary report. I understand this will be included in your filing with the Court. The opinions expressed herein are preliminary and subject to change. I further reserve my right to revise the opinions expressed herein in the event further research by me reveals revisions are necessary.

Section 1:   Qualifications and Experience

2.   I am a certified public accountant and a financial management consultant with more than 50 years of experience in the field of accounting. I am the principal in Kupperberg & Associates and have been retained as an expert consultant in this action.   I have been qualified to testify in various financial matters in multiple states and in both federal and state courts. A copy of my current Curriculum Vitae is attached hereto as Exhibit A.

3.   I am being compensated for my analysis and testimony in this litigation at the rate of $600 per hour, and my associates/staff at Kupperberg & Associates are being compensated at various lower rates.

4.   I have no publications within the past 10 years. The attached Curriculum Vitae lists the trials and depositions in which I have testified as an expert.

Section 2:   Data and information considered

5.   Data and information:

1

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

- Complaint dated December 17, 2020

- Order Granting in Part and Denying in Part Defendant's Motion to Dismiss. Dated September 16, 2021.

- Defendant Ancestry's Responses to Plaintiffs' First Set of Interrogatories Dated July 25, 2022.

- Defendant Ancestry's Supplemental Responses to Plaintiff's First Set of Interrogatories Dated October 25, 2022

- License Agreement Addendums and Amendments between Ancestry.com and PeopleConnect (Classmates) from 2018 through 2022. (Ancestry_00000209-246)

- Nevada Yearbook detail from Ancestry production (Ancestry_00000218,227,228 and 239).

- Nevada Department of Education Data and Statistics Related to Statewide Enrollment by Grade and school for various years from 2015 and other statistics for Enrollment from 1960.

- U.S. Department of Education – 120 Years of American Education: A Statistical Portrait.

- Mortality tables and various studies relating to number and ages of people alive in 2018.

- Population data from US Census Bureau for the period 1960 to 2000.

Section 3:   Scope, Opinions and analysis

6.   In performing my analysis, I assumed that the pleadings are correct and that the acts claimed are the proximate cause of damage to Plaintiffs. In discussing the questions of class size and damages, I do not mean to express any opinion as to the validity of the claims.

Scope of Declaration:

7.   Counsel have asked me to provide a declaration addressing two issues:

I.   Estimated size of the Class

II.   Calculating Class-wide damages

2

I.   Estimated size of the Class

8.   Counsel have asked me to assume the following Class definition:

All persons: (1) who are Nevada residents or were Nevada residents at any time between December 17, 2017, and the present; (2) who are not paying subscribers, free trial users, or registered users of Ancestry.com; and (3) for whom one or more of their yearbook photographs were searchable on Ancestry.com at any time between December 17, 2017, and the present.

9.   My preliminary estimate of the number of Class members is based on my research and the discovery presently available in this case. I reserve the right to adjust or amend these amounts based on later discovery or the results of additional ongoing research.

10.   I estimate the size of the Class to be approximately 112,000 members. I reached this estimate by using two alternative methods, both of which yielded similar estimates of Class size. To be conservative, I adopt the lower of the two estimates as my final estimate of Class size.

Method 1: Starting From the Number of Photographs from Nevada Yearbooks in Ancestry's Database

11.   According to Ancestry, there are 1,317 unique yearbooks from Nevada schools in its database (after eliminating duplicates) and 2,654,270 individual records included in those Nevada yearbooks. *See* Osborn Decl., Ex. 9 (Ancestry's Supplemental Response to Interrogatory 12). The latter figure is roughly confirmed by a search I performed on Ancestry's website, which yielded 2,687,197 records from Nevada yearbooks. I understand that each record in Ancestry's database corresponds to a yearbook photograph. The former figure appears to slightly under-report the total number of Nevada yearbooks. Ancestry produced an excel spreadsheet listing 938 Nevada yearbooks (Ancestry_00000213-239). That list included yearbooks that were not taken into account in Ancestry's answer to Interrogatory 12. I combined the two sets of data into one and eliminated all duplications. The resultant number of individual Nevada yearbooks was 1,491.

12.   To calculate the number of distinct individuals who appear in the 2.7m records/photographs from Nevada yearbooks, I assumed each student who appears in a Nevada

3

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

yearbook appears in an average of eight separate photographs. This assumption would be true if every student appeared in four separate yearbooks (all four years of high school) and twice in each yearbook (one portrait photo and one group photo). I believe this to be a very conservative assumption. Ancestry's database does not contain all yearbook years for each Nevada school in the database, so it does not have four consecutive years of yearbooks for every student. Named Plaintiffs Mark Sessa and Anthony Sessa appear in four records and three records, respectively. Compl., at ¶¶31, 43. It is likely that individual students appear on average in far fewer than eight separate photographs.

13. Dividing Ancestry's reported number of Nevada photographs/records by eight yields an estimated 331,784 distinct students from Nevada schools whose names and photographs are searchable on Ancestry's website.

14. Next, I took mortality into account. Some of the individuals from Nevada schools who appear in Ancestry's database are not Class members because they have passed away. I assumed conservatively that all individuals whose yearbooks are dated prior to 1974 have passed away. Individuals who were 18-year-old seniors in 1974 would be 66 years of age today. In its Interrogatory responses, Ancestry stated there are 1,317 Nevada yearbooks in its database. However, there are at least 1,491 as calculated above. Of these, based upon my sorting of the yearbooks by year, 637, or 42.7%, were dated prior to 1974. I therefore decreased my estimate by 42.7%. This conservative mortality adjustment brought the estimate to 190,036 distinct individuals who appear in photographs from Nevada yearbooks staring with 1974.

15. I then used U.S. Census data to estimate the proportion of those 65 years of age and younger who have passed away. The 2018 U.S. Census tables show that at least 81.2% of Americans ages 65 or less were alive, while 18.8% had passed away. Reducing the estimate by this 18.8% yielded an estimated 154,309 distinct living individuals who appear in photographs from Nevada yearbooks.

16. Next, I took into account migration into and out of Nevada. Some individuals who appear in Nevada yearbooks are not members of the Class because they moved out of Nevada prior

4

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

to December 17, 2017. On the other hand, some individuals who appear in yearbooks from non-Nevada schools are members of the class because they moved into Nevada after school. Data from the U.S. Census Bureau indicates that net migration into Nevada (residents of other states moving in, less residents of Nevada moving out) has been positive every year from 1950 through 2021 and by at least 2.32% each year from 1974 through 2005. Because Nevada has experienced positive net migration, the total number of living individuals who resided in Nevada during the relevant period should be somewhat larger than 154,309. However, to be conservative, I applied no adjustment for migration.

17.   Finally, I took into account the number of free trial users and paying subscribers in Nevada who also appear in yearbook photographs on Ancestry.com. Based upon the Supplemental Responses to Interrogatories (Interrogatory 10) from Ancestry.com there are 24,738 paying subscribers and 192,433 free-trial users with Nevada addresses, for a total of 217,171 registered users in Nevada. The population of Nevada in 2021 was estimated to be 3.144 million by the U.S. Census Bureau, meaning that 6.9% of Nevada's population are free trial users or paying subscribers of Ancestry.com. Accordingly, I reduced my estimate of the number of Class members by 6.9%, yielding a final estimate of 143,650 Class members.[1]

Method 2: Starting from the number of Nevada yearbooks in Ancestry's database

18.   As stated above, in its answer to Interrogatories, Ancestry stated that its database includes 1,317 yearbooks from schools in Nevada, although the documents it produced indicate there are at least 1,491. To be conservative, for purposes of the calculations below I assume the smaller of these figures.

19.   To estimate the number of distinct individuals each Nevada yearbook represents in the Ancestry database, I used the average senior class size in Nevada high schools. This avoids double-counting students who appear in multiple yearbooks as they progress through school. [2]

---

1 To the extent there are registered users in Nevada who are neither paying subscribers nor free trial users, I reserve the right to modify my estimate of the class size accordingly.
2 This is again a conservative method. Because Ancestry does not have all yearbooks from all years in its database, not all students who appear in the Ancestry database appear there as part of

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

20.   Using data obtained from the Nevada Department of Education, the average number of high school seniors in Nevada has been approximately 33,000 over the past seven years. Also, according to the Nevada Department of Education, there are 154 high schools in Nevada (based upon my analysis of Nevada school enrollment detail by grade and by school). This implies an average class size of 214.5 seniors per Nevada high school. This in turn implies that at least 214.5 distinct individuals appear in Ancestry's database for every Nevada yearbook in its database.

21.   Multiplying the 1,317 yearbooks in Ancestry's database by the estimated 214.5 distinct individuals per yearbook yields an estimated 282,497 distinct students from Nevada schools whose names and photographs are searchable on Ancestry's website.

22.   I then applied adjustments for mortality, net migration, and subtracting registered users, just as I did in Method one. My methods for calculating these adjustments are described in Method one above. The calculations are: 1,317 yearbooks times 214.5 seniors per yearbook = 282,497 seniors; less 47.5% for pre-1974 mortality = 148,434; less 18.8% for post-1973 mortality = 120,528, which is my estimate of the number of living seniors whose yearbook photos appear on the Ancestry.com website. Finally, after applying the 6.9% reduction for those individuals who either subscribed or were free-trial users of Ancestry.com, I arrived at a conservative estimate of 112,203 Class members.

23.   The period of damage continues and the number of yearbooks, mortality of Class members as well as the number of Ancestry.com users will likely change. As additional information becomes available, I will include it in my calculations.
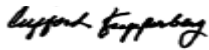
Calculating class-wide damages

24.   Counsel have asked me to assume that Plaintiffs will be pursuing statutory damages in the amount of $750 per photo for each Class member, pursuant to Nevada's Statutory Right of Publicity. Nev. Rev. Stat. §597.770 *et seq*. Aggregate class-wide damages may be calculated by

---

their senior class. They may instead appear only as part of a different class year, for example an earlier high school year. My method counts only those who appeared as high school seniors and therefore undercounts the total Class size.

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)

1   multiplying the number of records/photographs from Nevada yearbooks, after my conservative

2   adjustments for mortality, net migration, and Ancestry subscribers, by the $750 minimum statutory

3   damage award. In the alternative, should this Court determine statutory damages are available on

4   a per-person rather than a per-photograph basis, aggregate class-wide damages may be calculated

5   by multiplying the number of Class members by the $750 minimum statutory damage award.

6   25.   These calculations are based upon available data as of this date. Should additional

7   data received allow more reliable methodology I will amend the calculations accordingly.

10   *[signature]*

11   Clifford Kupperberg

12   CK:kp

DECLARATION OF CLIFFORD KUPPERBERG, CPA (Case No. 2:20-cv-02292)